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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,683

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EXAMINER

KIM, DAVID S

ART UNIT

PAPER NUMBER

2613

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/808,683	Applicant(s) WELLEN, JEROEN SIEBRAND	
	Examiner DAVID S. KIM	Art Unit 2613	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-20.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☒ Other: See Continuation Sheet.

/Kenneth N Vanderpuye/
 Supervisory Patent Examiner, Art Unit 2613

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed on 29 February 2008 with respect to the claims have been fully considered, but they are not persuasive. Applicant presents one salient point.

Regarding this point, Applicant states:

The Office Action asserts that Combs teaches transmitting downstream services through an entirely passive path. The Applicant respectfully disagrees. With respect to Combs Figure 1, the Examiner's attention is directed to the fact that all downstream traffic must pass through mini-fiber node (mFN) 108, for which a functional block diagram thereof is provided in Combs Figure 5. Per Combs Figure 5, all downstream traffic must enter the mFN through lightwave interface device 202 and be routed through coupler 208. Before arriving at coupler 208, a portion of the downstream traffic is modulated by modulator 204, which is clearly an active device and can thereby add gain to the downstream signal. Aside from the modulator 204 itself being able to add gain to the downstream signal, since the signal output from modulator 204 is supplied to coupler 208, coupler 208 is also able to add power to downstream signals being passing through it.

Furthermore, Coupler 208 receives a signal from loop-back device 212, which Combs explicitly states are forwarded "to the coupler 208 to be combined with the signals received from the head-end" (col. 9, lines 24-26, emphasis added). Combining additional signals with "signals received from the head-end" (i.e., downstream signals) clearly adds power to the downstream signals, thus making the path they are propagating on not "a passive optical downstream path."

Thus, Combs does not disclose each and every element of the Applicant's independent claim 1, failing to teach or suggest at least the limitation of "transmitting services to said customer premises using an end-to-end passive optical downstream path."

(Remarks, p. 8-9)

For at least the reasons discussed above in response to the Examiner's 35 U.S.C. 102(e) rejection of claims 1, 16 and 18, Combs fails to teach or suggest Applicant's invention as a whole. Specifically, Combs does not teach the "passive optical path" of independent claim 8, because as stated above, Combs only teaches a single path active network, where all traffic between Head-End 102 and End-Users 112 must pass through active components, including Mini-Fiber Node (mFN) 108.

As mentioned, a portion of the downstream signals received by mFN 108 must be modulated by modulator 204, which is an active device. Without modulator 204, baseband signals entering mFN 108 would not be able to be modulated onto a passband, and thus could not be utilized by end-users 112 (of Figure 1).

As also mentioned, mFN 108 includes loop-back device 212, which Combs discloses as forwarding signals "to the coupler 208 to be combined with the signals received from the head-end" (col. 9, lines 24-26, emphasis added). Combs teaches that the purpose of loopback-device 212 is to perform Media Access Control (MAC). Specifically, Combs states

"If local MAC is implemented, local access signals may be out-of-band and thus are not modulated together with other communication signals. For this case, the local access signals may be split out by an optional splitter...and forwarded to the loopback device 212. The loopback device 212 then performs any local access contention/control functions that may be desired and forwards loopback signals to coupler 208 to be combined with the signals received from the head end." (See Combs, col. 9, lines 18-26, emphasis added)

Thus, without loopback device 212 and signals being "combined with the signals received from the head end," there could be no MAC in Combs.

To summarize the above, not utilizing an active downstream path (i.e. utilizing a "passive optical downstream path") in Combs would entail having baseband signals entering mFNs 108 not being modulated, and MAC not able to be performed. Therefore, in addition to Combs not even teaching a "passive optical path," Combs does not suggest utilizing one either. Hence, independent claim 8 is not obvious in view of Combs, and is patentable under 35 U.S.C. 103(a).

(Remarks, p. 9-10)

Examiner respectfully notes that Applicant's argument largely relies on the following characterization of the standing rejections from the cited portion above, "The Office Action asserts that Combs teaches transmitting downstream services through an **entirely passive** path" (Remarks, p. 8, start of last paragraph, emphasis Examiner's). However, Examiner respectfully disagrees with this characterization. The standing rejection states the following:

Regarding claim 1, Combs discloses:

In an access network, a method for the communication of services to and from customer premises (end-users 112 in Fig. 1), comprising: transmitting (arrows pointing to the right in Figs. 3-4) services to said customer premises using an end-to-end passive optical downstream path (e.g., paths associated with optical splitters 316 in Fig. 3 and 304 in Fig. 4); and receiving (arrows pointing to the left in Figs. 3-4) services from said customer premises using an active optical upstream path (e.g., upstream links in Figs. 3-4).

(Final Rejection mailed on 10 January 2008, p. 3)

Regarding claim 8, claim 8 is an apparatus claim that corresponds largely to the method claim 6. Therefore, the recited steps in method claim 6 read on the corresponding means in apparatus claim 8. Claim 8 also includes limitations absent from claim 6. Combs also discloses these limitations:

a splitter associated with an end-to-end passive optical path for splitting downstream services intended for said customer premises (optical splitter 304 in Fig. 4);
at least one receiver for receiving services comprising optical signals from said customer premises intended for upstream transmission (e.g., lightwave receivers in 320 in Fig. 3, transceivers in 312 in Fig. 4).
(Final Rejection mailed on 10 January 2008, p. 6)

Notice that the standing rejection simply employs the claim language, and the claim language does not actually claim an **entirely passive** path. Rather, claim 1 simply states, "transmitting services to said customer premises **using** an end-to-end passive optical downstream path" (emphasis Examiner's). Similarly, claim 8 simply states, "a splitter associated with an end-to-end passive optical path for splitting downstream services intended for said customer premises". Regarding the term "end-to-end", Examiner refers to the following portion of a previous Office Action:

"Examiner respectfully notes that any path is an end-to-end path. Any path travels from one end to the other end. Accordingly, Applicant's arguments are not persuasive, and Examiner respectfully maintains the standing rejections.

However, if Applicant considers the details of each end to provide subject matter that distinguishes Applicant's invention from the prior art, then Applicant is encouraged to include such subject matter in the language of the claims. That is, the prior art of record does show the simple use of an end-to-end passive optical downstream path. However, Applicant appears to focus on the differences between the ends of the paths of Combs and the ends of the paths of Applicant's invention (e.g., Remarks, p. 8-9, bridging paragraph). Nonetheless, the claim language does not appear to sufficiently capture these differences in a way that is patentably distinguishable" (Non-final Rejection mailed on 08 August 2007, p. 7).

The standing rejection identifies "paths associated with optical splitters 316 in Fig. 3 and 304 in Fig. 4" of Combs as "an end-to-end passive optical downstream path" in independent claim 1. These "paths associated with optical splitters 316 in Fig. 3 and 304 in Fig. 4" of Combs are passive between any suitable passive ends. Similar reasoning applies to the corresponding limitations in the other independent claims. Accordingly, Applicant's point is not persuasive, and Examiner respectfully maintains the standing rejections.

Continuation of 13. Other:

Claim Objections

Applicant responded to objection to claim 20 in the previous Office Action (mailed on 10 January 2008) by amending claim 20. Applicant's response overcomes the previous objection, which is presently withdrawn.